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Supreme Court of the United States

October Term, ~~1924.~~ 1925
No. ~~373.~~ 53

AMERICAN RAILWAY EXPRESS CO., a corporation
Petitioner

vs.

GEORGE C. DANIEL
Respondent.

Certiorari to Review a Judgment of the Supreme Court of Georgia

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BRIEF ON BEHALF OF AMERICAN RAILWAY EXPRESS COMPANY, PETITIONER.

SUBJECT INDEX OF BRIEF

CASES CITED

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(157 GEORGIA 731)

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STATEMENT OF THE CASE

This action was originally brought in the Superior Court of Madison County, Georgia, by George C. Daniel against the American Railway Express Company to recover the sum of one hundred fifty-two and 50/100 ($152.50) dollars as the value of certain articles contained in an express ship-

ment delivered to the agent of the defendant express company on August 25th, 1920, at Comer, Georgia, to be carried by the defendant company to Baltimore, Maryland. Mrs. J. S. Daniel was the shipper of this express package and her son, George C. Daniel, the plaintiff, was named as consignee thereof. It was alleged that the shipment was never delivered.

The defendant company, in its answer, admitted the receipt of the package and its failure to deliver but pleaded that its liability was limited to fifty dollars as being the written value declared by the shipper to which the defendant had applied the lower of two alternate rates. By its plea it admitted liability to the extent of fifty ($50.00) dollars, which amount it tendered to the plaintiff.

The evidence adduced upon the trial showed that the package was not delivered to the defendant's express agent by Mrs. Daniel in person but that this was done for her by her representative, one Fowler, who, while knowing in a general way the nature of the contents of the shipment did not know its value. This fact Fowler stated to the express agent upon delivery to the latter of the shipment and in response to the agent's inquiry as to its value for rate fixing purposes. The express agent thereupon asked if a valuation of fifty ($50.00) dollars would be satisfactory and this was agreed to by Fowler. The express agent then wrote that sum into the express receipt as expressing the value of the package and gave the receipt to Fowler, who accepted it (Record, pp. 12-14). The representative capacity of Fowler was known to the express agent.

In order to bring itself within the protection of the receipt the defendant express company proved by the oral testimony of the express agent that the rate charged was dependent upon the value declared. His testimony on that point was that above a fifty ($50.00) dollar valuation a higher rate would have been charged (Record, pp. 12, 13). The defendant also offered in evidence a duly certified

copy of its schedules of rates of file with the Interstate Commerce Commission for the purpose of showing that its tariffs varied with declared valuation, but the trial judge, of his own motion, ruled this evidence inadmissible as being irrelevant and immaterial. (Record, p. 15.)

As the original express receipt was lost, the trial court refused permission to the defendant to introduce in evidence a copy thereof containing the various terms and conditions usually found in such documents, but did accord the right to prove the contents of the receipt by parole. The proof of the defendant in this respect showed that the receipt accepted by Fowler for delivery to his principal contained a written statement that the value of the package to be transported was fifty ($50.00) dollars.

The jury returned a verdict for the plaintiff, of one hundred ($100.00) dollars, and judgment against the defendant for that sum was thereupon taken. When its motion for a new trial was overruled by the trial court, the defendant prosecuted its appeal to the Court of Appeals of Georgia. That court sustained the lower court and allowed the verdict and judgment to stand. (29 Ga. App. 780). Petitioner then filed its petition for a writ of certiorari in the Supreme Court of Georgia, seeking to review the judgment and decision of the said Court of Appeals. The petition for the writ was sanctioned, the writ of certiorari issued and the cause brought into the Supreme Court of Georgia for final determination. On March 1, 1924, the Supreme Court handed down its decision and judgment, which was an affirmance of the Court of Appeals, for that three justices of the full bench of six justices stood in favor of affirming the Court of Appeals and three justices in favor of reversing the said Court and thereupon, under the rule, the judgment of the Court of Appeals stood affirmed by operation of law.

The petitioner then filed in this Court its petition for a writ of certiorari to the final judgment of said Supreme

Court of Georgia, which was duly allowed and granted on the 12th day of May, 1924.

SPECIFICATION OF ERRORS

It is submitted that the Supreme Court of Georgia erred in making and entering the final judgment in this case on the first day of March, 1924, by which final judgment the Supreme Court affirmed and sustained the judgment of the Court of Appeals of Georgia, theretofore made and entered in this cause, in the following particulars, to-wit:

> "1. The Supreme Court of Georgia erred to the prejudice of this petitioner in holding and deciding that petitioner, under the facts in this case could lawfully be held liable in any greater sum than fifty ($50.00) dollars which was the amount declared or agreed upon in writing by the shipper as the value of the property shipped and as to which petitioner had applied a rate dependent upon the value so declared.
>
> "2. The Supreme Court of Georgia erred to the prejudice of your petitioner in holding and deciding that your petitioner was liable to the extent of the actual value of the property lost because your petitioner did not produce evidence or otherwise make it appear that the value written into the receipt, issued by it and accepted by the shipper, was placed therein *knowingly* and *understandingly* and for the *purpose of securing the lower rate* adjusted to the value thus inserted.
>
> "3. The Supreme Court of Georgia erred to the prejudice of your petitioner in holding and deciding that under the Act of Congress passed August 9, 1916, known as the "Second Cummins Amendment" to the Interstate Commerce Act, your petitioner, in order to limit its liability to the value declared or agreed upon in writing by the shipper, must make it appear that the value so declared or agreed upon was *knowingly* and *understandingly written for the purpose of securing the lower rate* and that the legal presumption that it was so done would not avail your petitioner.

"4. The Supreme Court of Georgia erred to the prejudice of your petitioner, in sustaining and affirming the Court of Appeals of Georgia which in turn had affirmed the trial court in excluding, ex mero motu, certified copies of your petitioner's rate schedules of file with the Interstate Commerce Commission."

BRIEF OF THE ARGUMENT

The Code of Georgia, 1910, paragraph 6202, provides that no decision of the Supreme Court of Georgia shall be delivered *ore tenus,* but that

> "the same shall be announced by a written synopsis of the points decided."

This section was made applicable to the Court of Appeals of Georgia by the Constitution of the State. Thus Section 2, of Article 6, paragraph 9, of the Georgia Constitution as amended in 1916, provides:

> "* * * The laws relating to the Supreme Court as to the * * * powers, practice procedure (therein) * * * shall apply to the Court of Appeals."

But paragraph 6208 of the Georgia Code of 1910, is that

> "If the Court (the Supreme Court) is not unanimous in its decisions, the judges shall deliver the opinions seriatim, but they shall not be required to write them out."

In cases wherein the Supreme Court stand equally divided, thus affirming the decision under review by operation of law, the practice has been to omit any written opinion.

It thus appears that while the judgment under review in this Court is that of the Supreme Court of Georgia, we must look to the written opinion and decision of the Court of Appeals to determine the reasons assigned for the judgment. The Supreme Court by its affirmance has placed its stamp of approval upon the conclusions reached by the Court of Appeals, and as those conclusions were predicated

upon rules of law announced to be controlling it would seem that the court of last resort in Georgia has also sanctioned the reasoning of the intermediate court. Of course this is not necessarily true, for the Supreme Court may have approved the result but repudiated the reasoning which led to the result. But as the result itself is, upon the record, erroneous, no matter upon what theory it was reached, and as the explanation afforded by the opinion of the Court of Appeals supplies the only expression of either court of the reasons upon which the judgment is made to rest, this brief will concern itself largely with the doctrines announced by the Court of Appeals. It is believed, however, that the brief will demonstrate that irrespective of the reasons ascribed, the conclusion reached is erroneous, and that the application of the law as announced in repeated decisions of this Court, and embodied in the Acts of Congress, must compel a reversal of the state court's judgment.

The petitioner seeks by this writ to challenge the construction placed by the State Court upon the Act of Congress passed August 9, 1916, ch. 301, 39 Stat. 441, known as the "Second Cummins Amendment" to the Interstate Commerce Act, by which construction it was held that liability for full, actual loss, damage or injury accrued against the carrier unless the carrier should make it appear that the value written into the receipt and which value formed the rate basis, was placed therein with the *knowledge and understanding* of the shipper that it was to form the basis of the rate and was placed there *for that purpose;* and that there was no presumption of law, in aid of the carrier, that the value written into the receipt accepted by the shipper was conclusively presumed to be therein for the purpose of applying the alternate rate adjusted to the value.

There is a further challenge to the error in failing to allow the petitioner to put in evidence its rate schedules of file with the Interstate Commerce Commission.

The syllabus of the points adjudicated by the Court of Appeals and the opinion of Judge Stephens who spoke for the Court appear in the Record, pages 27 to 29.

The specifications of error, numbers 1, 2 and 3, call into question the construction of the "Second Cummins Amendment" and are argued together herein. The fourth specification of error is treated separately.

A BRIEF ANALYSIS OF THE OPINION OF THE STATE COURT

The "Second Cummins Amendment" to the Interstate Commerce Act (Act of Congress, August 9, 1916, ch. 301, 39 Stat. 441), provides that

> "the provisions hereof respecting liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation or agreement or release as to value, and declaring any such limitation to be unlawful and void, shall not apply, first, to baggage carried on passenger trains or boats, or trains or boats carrying passengers; second, to property, except ordinary live stock, received for transportation concerning which the carrier shall have been or shall hereafter be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released, and shall not, so far as relates to values, be held to be a violation of section ten of this Act to regulate commerce, as amended; and any tariff schedule which may be filed with the commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared or agreed upon; and the commission is hereby empowered to make such order in cases where rates dependent upon and varying with declared or agreed values would, in

> its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation. The term 'ordinary live stock' shall include all cattle, swine, sheep, goats, horses and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses."

The decision of the lower court is made to turn upon the *knowledge* and *understanding* with which the shipper declared the value of the package tendered for transportation. It is said that the *arbitrary* declaration of value made by the shipper when offering the goods to the carrier does not show that the shipper *knew* and *understood* that such a declaration was to control the rate to be paid, and that even though all other prerequisites of the Cummins Amendment had been met by the carrier, the failure to show that the purpose of the written declaration was to procure the lower rate would authorize recovery to the extent of full, actual loss.

The Court goes on to point out that in the instant case the shipper's agent was, to the knowledge of the express company's agent, ignorant of the real value of the package, and that the value written into the receipt was, therefore, an admittedly *arbitrary* one. Furthermore, it was said, the shipper's agent did not know that the express company maintained rates dependent upon value and consequently could not have declared the value with the knowledge and understanding that it was to be used to determine the rate.

It will be noticed that the lower court has presupposed that the petitioner (a) had been, as to this shipment, expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property; and (b) that there had been a written declaration of value or written agreement as the released value of the property made by the shipper through her agent.

Yet, the court held that proof of these two essentials was not enough to limit liability to the value declared, but that the petitioner should have gone further and shown that the shipper

> "consented to the $50.00 valuation for the purpose of securing the reduced rate charged" (Record, p. 29, concluding words of Judge Stephens' opinion elaborating the first headnote).

THE ACTS OF FOWLER, THE SHIPPER'S AGENT, WERE THE ACTS OF THE SHIPPER

It will doubtless be well at this juncture to point out that the shipper, acting through her agent, Fowler, was bound by his acts in agreeing to the valuation placed in the receipt as fully as though she herself had made the agreement.

In *Great Northern Ry. Co.* vs. *O'Connor,* 232 U. S. 508, it was said:

> "A shipper, whose forwarder has violated instructions as to valuation or classification to his damage, has his remedy against the forwarder but not against the carrier. He is bound by the acts of his agent!"

PETITIONER MAINTAINED ALTERNATE RATES DEPENDENT UPON VALUE DECLARED OR AGREED UPON IN WRITING AND IS ENTITLED TO THE PRESUMPTION THAT IT HAD BEEN EXPRESSLY AUTHORIZED OR REQUIRED SO TO DO BY ORDER OF THE INTERSTATE COMMERCE COMMISSION

The agent of the Express Company testified that the rates to be charged the shipper would depend upon the value declared by him (Record, pp. 12, 13). This testimony was uncontroverted and the Georgia Court of Appeals assumed without question that the petitioner's rates varied with the value declared or agreed upon.

To sustain its contention that it had been expressly authorized or directed by the Interstate Commerce Commission to maintain rates based upon value the petitioner relies upon the presumption to be indulged in its behalf that it was carrying on its business lawfully, and that having shown the maintenance of rates based upon value due authority of the Interstate Commerce Commission so to do is to be implied in the absence of proof to the contrary.

Cincinnati, New Orleans & Texas Pacific Ry. Co. vs. *Rankin*, 241 U. S. 319, 327;

American Ry. Expr. Co. vs. *Lindenburg*, 260 U. S. 584.

In the *Lindenburg* case it was said:

> "It is a rule of general application that where an act is done which can be done legally only after the performance of some prior act, proof of the later carries with it a presumption of the due performance of the prior act."

and after citation of authorities the Court continues:

> "In the absence of proof to the contrary, we, therefore, indulge the presumption that in basing its transportation charges upon the values recited in the receipt, the petitioner had due authority."

It would seem, then, that petitioner had brought itself within the protection of the Cummins Amendment and the receipt. The state appellate court could not justify an affirmance of the judgment of the nisi prius court on the ground that the petitioner had not shown compliance with the provisions of the Cummins Amendment in regard to the written declaration of value or the express authority of the Commission to maintain rates based upon value. It does not attempt to do so. It assumes that all that was necessary to be shown by the petitioner in this respect was shown, and its judgment is grounded altogether upon different considerations. We come now to discuss those considerations.

THE SHIPPER AND CARRIER ALIKE ARE CHARGED WITH KNOWLEDGE OF THE ONLY LAWFUL RATE WHICH THE CARRIER MAY EXACT AND THE SHIPPER MUST PAY; IF THE RATE IS BASED UPON VALUE THE STATEMENT OF THE VALUE WRITTEN INTO THE RECEIPT BY THE SHIPPER, AND ACCEPTED BY HIM, IS PRESUMED TO HAVE BEEN INSERTED FOR THE PURPOSE OF APPLYING THE GRADUATED RATE APPLICABLE THERETO

(a) *The Shipper's Knowledge of the Carrier's Published Rates is Presumed.*

Section 6 of the Interstate Commerce Act (as amended by Section 2 of the Hepburn Act, June 29, 1906, ch. 3591, 34 Stat. 584, 586), provides:

> "That every common carrier subject to the provisions of this Act shall file with the Commission created by this Act and print and keep open to public inspection schedules showing all the rates, fares and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print, and keep open to public inspection as aforesaid, the separately established rates, fares and charges applied to the through transportation. The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares and charges, or the value of the service rendered

to the passenger, shipper, or consignee. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be kept posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. The provisions of this section shall apply to all traffic, transportation, and facilities defined in this Act.

* * * * * * * *

"No carrier, unless otherwise provided by this Act, shall engage or participate in the transportation of passengers or property, as defined in this Act, unless the rates, fares and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this Act; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs . . . . ."

Petitioner, being engaged in the interstate transportation of express is subject to the requirements of this Act. It may not lawfully transact that business until it has complied with the provisions thereof. Being actually engaged in that business the presumption is that it was lawfully carrying it on,—that is, that it had filed and published its rates as it was commanded to do by the statute.

Cincinnati, New Orleans & Texas Pac. Ry. Co. vs. *Rankin*, 241 U. S. 319, 327;

New York Central & Hudson River R. R. Co. vs. *Beaham*, 242 U. S. 148;

American Railway Express Company vs. *Lindenburg*, 260 U. S. 584.

The rates when filed and published are equally binding upon the shipper and carrier, and both are charged with knowledge of them.

Thus in

Kansas City Southern Ry. Co. vs. *Carl*, 227 U. S. 639, 652, it was said:

> "The rate, when made out and filed, is notice, and its effect is not lost, although it was not actually posted in the station. * * * The shipper's knowledge of the lawful rate is conclusively presumed."

Missouri, Kansas & Texas Ry. Co. vs. *Harriman*, 227 U. S. 657;

Boston & Maine Rd. vs. *Hooker*, 233 U. S. 97;

Atchison, Topeka & Santa Fe Ry. Co. vs. *Robinson*, 233 U. S. 173;

Chicago & Alton R. R. Co. vs. *Kirby*, 225 U. S. 155, 166;

Louisville & Nashville R. R. vs. *Maxwell*, 237 U. S. 99.

(b) *The Purpose for Which the Value is Declared by the Shipper Will be Presumed.*

The shipper being bound to a knowledge of the rates, and that they were dependent upon the value declared at the time of shipment, is also conclusively bound by the presumption that in declaring the value he did so for the purpose of securing that rate which was related to that value.

In the *Harriman* case, *supra*, this Court, speaking through Mr. Justice Lurton, said:

> "The ground upon which the shipper is limited to the valuation declared is that of estoppel, *and pre-*

supposes the valuation to be one made for the purpose of applying the lower of two rates based upon the value!" (P. 668.)

And in the *Carl* case it was said:

> "The valuation declared or agreed upon as evidenced by the contract of shipment upon which the published tariff rate is applied, must be conclusive in an action to recover for loss or damage a greater sum."

(c) *The Inherent Error in the State Court's Opinion.*

The first syllabus of the opinion rendered by the Georgia Court of Appeals epitomizes the decision. It reads:

> "Where a carrier seeks to limit its liability to the declared or agreed value contained in the contract of shipment, as provided in the Second Cummins Amendment, of August 9, 1916, such declared or agreed value must be declared or agreed upon knowingly and understandingly by the shipper and the carrier and for the purpose of securing the reduced rate authorized by the amendment. While a receipt given to the shipper by the carrier for goods received for transportation will, when accepted by the shipper, operate as a contract between the parties, a recital in the receipt of a certain valuation of the property, even though the carrier exacted a lower authorized rate adjusted to such valuation, does not, without more, constitute an agreement knowingly and understandingly made by the shipper and the carrier for the purpose of securing a reduced rate of transportation."

In the light of the authorities just cited and quoted from it must be apparent that the rule announced in this headnote and in the body of the opinion finds no sanction in the federal law. On the contrary this Court has expressly denied it.

The Georgia Court manifestly misapplied the words "knowingly and understandingly made". This court has used the words "understandingly and freely" in connection with these contracts. Without undertaking to draw distinction between the expressions "understandingly and freely" and "knowingly and understandingly," let us examine the

circumstances in which this Court has used the expression "understandingly and freely" in this connection.

In *Union Pacific Railroad* vs. *Burke*, 255 U. S. 317, 321, this court said:

> "In many cases from the decision in Hart vs. Penn Railroad Co., 112 U. S. 331, decided in 1884, to Boston & Maine R. R. vs. Piper, 246 U. S. 439, decided in 1918, it has been declared to be the settled federal law that if a common carrier gives to a shipper the choice of two rates, the lower of them conditioned upon his agreeing to a stipulated valuation of his property in case of loss, even by the carrier's negligence, if the shipper makes such a choice, understandingly and freely, and names his valuation, he cannot thereafter recover more than the value which he thus places upon his property."

In *Adams Express Co.* vs. *Croninger*, 226 U. S. 491, 508-9, this Court said:

> "That no inquiry was made as to the actual value is not vital to the fairness of the agreement in this case. The receipt which was accepted showed that the charge made was based upon a valuation of fifty dollars, unless a greater value should be stated therein. The knowledge of the shipper that the rate was based upon the value is to be presumed from the terms of the bill of lading and of the public schedules filed with the Commission."

See: *Hart* vs. *Pennsylvania Rd.*, 112 U. S. 331, 340;

Atchison, Topeka & Santa Fe R. R. Co. vs. *Robinson*, 233 U. S. 173;

George N. Pierce Co. vs. *Wells, Fargo & Co.*, 236 U. S. 278.

In the case at bar, the shipper's agent brought the shipment to the carrier; a valuation was declared; the valuation was put into the receipt and the agent of the shipper accepted the receipt. The record shows no fraud, no duress, no imposition upon the shipper or the shipper's agent by the carrier. The shipper is of course bound by the act of

his agent. The shipper made no effort to correct the valuation, nor did she make complaint thereof, so far as the record shows, until after the loss.

There is certainly no evidence in the case to suggest that the transaction was not knowingly entered into, because, if for no other reason, the law required the shipper to know all that appertained to what was actually done. There is no evidence to suggest that the shipper did not understandingly do what was done, nor could there be any such suggestion, because the law required her to understand that there were different rates based upon valuation. There is nothing to suggest that what was done was not freely done, nor could such a suggestion be made. The shipper had the right under the filed tariffs to name whatever value she desired to name on the shipment, and to pay the rate lawfully affixing thereto. There is no suggestion that the shipper was denied this right.

The only basis for the contention that there was a failure to understand or a failure of knowledge, must be based upon the theory that the agent of the shipper who delivered the package to the carrier did not know the contents or value thereof. It is perfectly clear under the decisions that this cannot constitute a lack of knowledge of the law or the rates, or the rules and regulations. *Great Northern Ry. Co.* vs. *O'Connor*, cited above.

The shipper's choice of value must be left free and untrammeled, but having once stated that value fairly and freely, he is bound by it.

If the meaning attributed by the Georgia Court to the words "understandingly and freely" is to prevail, it completely destroys the whole theory upon which the Federal Transportation Law has been built.

But the Georgia Court of Appeals said that the carrier may maintain its limited liability defense only when it shows that the value declared and agreed upon was *knowingly* and

understandingly inserted and was inserted for the purpose of securing the reduced rate authorized by the Second Cummins Amendment. *Knowledge* and ***understanding*** of the shipper are joined to the ***purpose*** of the declaration by the conjunction *and*. Thus, the true interpretation of the decision is that the shipper must know and must understand that he is declaring a value for rate making purposes.

There is nothing in the record of the case at bar to show that the valuation was not understandingly made and fairly stated.

The state court assumes that if the rate is dependent upon the value declared by the shipper and if the shipper understands this fact and knows this fact when he declares the value and agrees to the value for the purpose of fixing the rate, then recovery will be limited to the amount of the value so declared or agreed upon in case of loss. The authorities cited show that the knowledge and understanding of the shipper is immaterial and that he will be conclusively presumed to have stated the value for the purpose of adjusting the rate. But the Court will notice that in the case sub judice there is no agreement on the part of the shipper or the carrier that liability will be limited to the amount of the valuation stated and upon which the rate was based and if there is to be a limitation to the stated value the authority therefor must be found in the law and not in any contract or agreement with the shipper that the carrier's liability should be limited to any stated sum or that recovery in case of loss should not exceed the stated value.

THE SHIPPER MAY NOT RECOVER MORE THAN THE VALUE STATED OR AGREED UPON IN WRITING BY HIM TO WHICH THE RATE HAS BEEN ADJUSTED EVEN THOUGH NO EXPRESS CONTRACT SO LIMITING RECOVERY WAS ENTERED INTO WITH THE CARRIER

(a) *Irrespective of the Second Cummins Amendment.*

We have now reached a point in the argument when the following question presents itself: In the absence of any agreement on the part of the shipper to be limited in his recovery to the amount stated in writing by him as the value of the shipment, to which value the carrier has applied a lower alternate rate, will the mere statement of value and application of such rate thereto serve to limit liability to the named valuation? Upon the authority of decisions of this Court that question should be answered in the affirmative. That the shipper is limited in his recovery proceeds upon the doctrine of estoppel. Broadly stated the rule is that a shipper may not declare a value and obtain the benefit of a lower rate and then after loss repudiate the declaration and recover more than the sum named by him for the purpose of securing the lower rate. Under such a rule it would not seem to be necessary that the shipper *agreed* to be estopped to recover full value or to recover more than the sum which he named. In other words, he is not estopped to repudiate his contract in which he agreed that the carrier should not be bound for more than the value declared, but he is estopped to recover more than his declared value because, having taken advantage of the rate adjusted to the lower valuation he will not be heard at a later time and after loss to say that the property had a different and a higher valuation.

In *Kansas City Southern Ry. Co.* vs. *Carl*, cited *supra*, this Court said:

> "* * * A declared value by the shipper for the purpose of determining the applicable rate, when the rates are based upon valuation, is not an exemption from any part of its statutory or common-law liability. The right of the carrier to base rates upon value has been always regarded as just and reasonable. The principle that the compensation should bear a reasonable relation to the risk and responsibility assumed is the settled rule of the common law. Thus in *Gibbon* vs.

Paynton, 4 Burrows, 2298, it was said by Lord Mansfield (p. 2300): 'His warranty and insurance is in respect of the reward he is to receive: and the reward ought to be proportionable to the risque.' In the leading case of *Hart* vs. *Pennsylvania Railroad*, 112 U. S. 331, the right of the carrier to adjust the rate to the valuation which the shipper places upon the thing to be transported is the very basis upon which a limitation of liability in case of loss or damage is rested. This is an administrative principle in rate-making recognized as reasonable by the Interstate Commerce Commission, and is the basis upon which many tariffs filed with the Commission are made. *Matter of Released Rates*, 13 I. C. C. Rep. 550.

"It follows, therefore, that when the carrier has filed rate-sheets which show two rates based upon valuation upon a particular class of traffic, that it is legally bound to apply that rate which corresponds to the valuation. If the shipper desires the lower rate, he should disclose the valuation, for in the absence of knowledge the carrier has a right to assume that the higher of the rates based upon value applies. In no other way can it protect itself in its right to be compensated in proportion to its insurance risk. But when a shipper delivers a package for shipment, and declares a value, either upon request or voluntarily, and the carrier makes a rate accordingly, the shipper is estopped upon plain principles of justice from recovering, in case of loss or damage, any greater amount. The same principle applies if the value be declared in the form of a contract. If such a valuation be made in good faith for the purpose of obtaining the lower rate applicable to a shipment of the declared value there is no exemption from carrier liability due to negligence forbidden by the statute when the shipper is limited to a recovery of the value so declared. The ground upon which such a declared or agreed value is upheld is that of estoppel."

And again, in *Chicago, Rock Island and Pacific Ry. Co.* vs. *Cramer*, 232 U. S. 490, the Court said:

"* * * if a regularly filed tariff offers two rates, based on value, and the goods are forwarded at the

> low value in order to secure the low rate, then the carrier may avail itself of that valuation when sued for loss or damage to the property."

It will be noted that in the *Cramer* case that there was no agreement on the part of the shipper that the carrier should be liable only to the extent of the value stated. That liability was so limited came about, not because of any express understanding to that effect as part of a contract, or as part of a published rate, but solely on the ground that the rate had been adjusted to value and that the doctrine of estoppel as applied by this Court would prevent recovery beyond that value.

And in the *O'Connor* case (*Great Northern R. R. Co.* vs. *O'Connor*, 232 U. S. 508), Mr. Justice Lamar said:

> "* * * If, on the other hand, there are alternative rates based on value and the shipper names a value to secure the lower rate, the carrier, in the absence of something to show rebating or false billing, is entitled to collect the rate which applies to goods of that class, and if sued for their loss it is liable only for the loss of what the shipper had declared them to be in class and value."

As was said in the *Carl* case, *supra*, and quoted with approval in the case of *American Railway Express Company* vs. *Lindenburg*, 260 U. S. 584:

> "To permit such a declared valuation to be overthrown by evidence aliunde the contract, for the purpose of enabling the shipper to obtain a recovery in a suit for loss or damage in excess of the maximum valuation thus fixed, would both encourage and reward undervaluations and bring about preferences and discriminations forbidden by the law. Such a result would neither be just nor conducive to sound morals or wise policies."

Wells, Fargo & Co. vs. *Neiman-Marcus Co.*, 227 U. S. 469;

This Court has been very positive in its decisions upholding specified primary valuations of shipments when the shippers get the benefit of reduced rates dependent thereon. Two additional important cases on this are

American Railway Express Co. vs. *Levee*, 263 U. S. 19,

and

Galveston, Harrisburg & San Antonio Railway Co. vs. *Woodbury*, 254 U. S. 357.

In the *Levee* case, the record discloses that there was a receipt issued which was in the usual form, and provided "In consideration of the rate charged for carrying said property which is dependent upon the value thereof and is based on an agreed valuation of not exceeding $50.00 for any shipment of 100 pounds or less * * * the shipper agrees that the company shall not be liable in any event for more than $50.00 for any shipment of 100 pounds or less." No other declaration of value was made by the shipper; the agent of the Express Company did not know the amount of the rate and told the shipper that he could not apply one for that reason but that he would have to forward the goods "collect" and that the charges would have to be collected at destination on delivery of the shipment to the consignee.

In the *Woodbury* case, Mrs. Woodbury began her journey in Canada; destination was in Texas, her trunk was lost. Nevertheless, she was charged with knowledge of the rates and regulations governing interstate commerce, although "it did not appear whether the ticket purchased contained notice of any such limitation nor did it appear what was the law of Canada in this respect." She was not told when the purchase of her ticket was made or when checking her trunk that there was any limitation to the carrier's liability for the loss of baggage.

In each of these cases the limitation provided by tariffs and classifications on file with the Interstate Commerce Commission was sustained.

The case at bar is stronger for the carrier than was either of those cases.

Union Pac. R. R. Co. vs. *Burke*, 255 U. S. 321.

(b). Under the second Cummins Amendment.

When a value has been declared by the shipper and a rate dependent thereon has been exacted the very words of the Cummins Amendment show that an *agreement* that the carrier shall not be liable beyond the valuation named is not a prerequisite to the carrier's limited liability defense. The salient words of the statute are:

> "in which case such declaration or agreement shall *have no other effect than to limit liability and recovery* to an amount not exceeding the value so declared or released." (Italics ours.)

There is nothing here about the validity of any *agreement* which the carrier may make seeking to limit its liability. The maintenance of rates dependent upon value and the authority of the Commission to do so are the only prerequisites to a limited liability. And when a value is declared under these circumstances the imperative words of the statute are that recovery *must* be limited to that amount. To permit a recovery beyond the declared value where other requirements of the Amendment have been met would do violence to the words in which the act is couched. The effect of declaring a value, when the carrier, upon the authority of the Commission, maintains rates dependent upon value, is to limit recovery to the amount declared. There shall be no other effect. There shall be no greater recovery. No agreement of the shipper is necessary to produce this effect. No contract is essential. The Amendment automatically fixes the liability.

If an agreement by the shipper touching the carrier's maximum liability ever was essential, certainly none is necessary since the passage of the Second Cummins Amendment.

THE DISCRIMINATION WHICH WOULD RESULT IF A GREATER RECOVERY WERE ALLOWED

The rate and the value are indissolubly bound up together in all instances in which rates are graduated on value. *Hart* vs. *Penn. R. R. Co.,* 112 U. S. 331, where the court said:

> "The presumption is conclusive that, if the liability had been assumed on a valuation as great as that now alleged, a higher rate of freight would have been charged. The rate of freight is indissolubly bound up with the valuation."

In the case of *Western Union Telegraph Co.* vs. *Esteve Bros. & Co.,* 256 U. S. 566, at page 572, it is said:

> "Uniformity demanded that the rate represent the whole duty and the whole liability of the company. It could not be varied by agreement; still less could it be varied by lack of agreement. The rate became, not as before a matter of contract by which a legal liability could be modified, but a matter of law by which a uniform liability was imposed. Assent to the terms of the rate was rendered immaterial, because when the rate is used, dissent is without effect. This principle was established in cases involving the limitation upon a carrier's liability for baggage by *Boston & Maine Railroad* vs. *Hooker,* 233 U. S. 97, and *Galveston, Harrisburg & San Antonio Ry. Co.* vs. *Woodbury,* 254 U. S. 357."

And again at page 573:

> "It is true that a railroad rate does not have the force of law unless it is filed with the Commission. But it is not true that out of the filing of the rate grows the rule of law by which the terms of this lawful rate conclude the passenger. The rule does not rest upon the fiction of constructive notice. It flows from the requirement of equality and uniformity of rates laid down in paragraph 3 of the Act to Regulate Commerce. Since any deviation from the lawful rate would involve either an undue preference or an un-

just discrimination, a rate lawfully established must apply equally to all, whether there is knowledge of it or not."

Again, in *P. C. C. & St. Louis Ry. Co.* vs. *Fink*, 250 U. S. 577, this Court said:

> "However this may be, in our view the question must be decided upon consideration of the applicable provisions of the statutes of the United States regulating interstate commerce. The purpose of the Act to Regulate Interstate Commerce, frequently declared in the decisions of this Court, was to provide one rate for all shipments of like character, and to make the only legal charge for the transportation of goods in interstate commerce the rate duly filed with the Commission. In this way discrimination is avoided, and all receive like treatment, which it is the main purpose of the Act to secure."

To allow the shipper who had stated a value and taken a corresponding rate to recover more than the value adjusted to the rate would be to create that very discrimination which Section 6 of the Interstate Commerce Act was aimed to prevent and would defeat the primary purpose of the Act itself.

In the *Robinson* case (*Atchison, Topeka & Santa Fe R. R.* vs. *Robinson*, 233 U. S. 173), this Court was asked to permit recovery for full actual value in the face of the fact that a lower value had been stated and the proper rate applied thereto. It was said on behalf of the shipper that a prior existing oral contract had been made in which no valuation had been stated. This Court said:

> "To maintain the supremacy of such oral agreement would defeat the primary purposes of the Interstate Commerce Act, so often affirmed in the decisions of this Court, which are to require the equal treatment of all shippers and the charging of but one rate to all, and that the one filed as required by the Act."

It is submitted then that as the liability is limited to the value stated as the rate basis upon the ground of estoppel

and as in the instant case a value was named which did form the rate basis recovery cannot be had after the loss has occurred beyond this stated value; and this is true, irrespective of any contract or agreement by the shipper that recovery should be so limited. To decree otherwise would be to open the door to the very abuses at which the Interstate Commerce Act was aimed.

SUMMARY

It would appear, therefore, in the instant case that the shipper had agreed, in writing, upon a valuation and that the carrier, who maintained alternate rates, had applied that rate which alone was the lawful rate; that it is presumed to have been carrying on its business lawfully, and it follows that being required to publish its rate schedules, it had done so, and that the shipper and carrier alike were bound thereby. And again, relying upon the presumption that it lawfully conducted its business, and nothing to the contrary appearing, it is entitled to the further presumption that the Interstate Commerce Commission had either authorized or required it to maintain these alternate rates. That these things concurring, the requirement of the Second Cummins Amendment respecting limitation of liability has been met, and it is not incumbent upon petitioner or any carrier under similar circumstances to prove the purpose for which the shipper agreed or declared the value or that he knowingly and understandingly did so for the purpose of obtaining a lower rate, as was held by the state appellate court, but, on the other hand, the law will presuppose the purpose of the declaration of value and will invoke the doctrine of estoppel to hold recovery to the value to which the rate is tied.

IT WAS ERROR FOR THE TRIAL COURT TO EXCLUDE THE RATE SCHEDULES

It will be borne in mind that the petitioner offered to

introduce into evidence at the trial copies of its rate schedules of file with the Interstate Commerce Commission. For this purpose it offered duly certified copies of the same under the hand and seal of the Secretary of the Commission. These schedules were rejected by the trial judge ex mero motu, the Court holding that these rate schedules were immaterial and irrelevant to any issue then being tried.

This Court has held that to be error. These same rate schedules, properly certified, were offered in evidence at the trial of the case of *Byers* vs. *Southern Express Company*. They were rejected by the trial judge. When that case finally came to this Court (*Southern Express Co.* vs. *Byers*, 240 U. S. 612), Mr. Justice McReynolds said:

> "It was plain error to exclude the rate schedules."

In the later case of *New York Central & Hudson River Railroad Co.* vs. *Beaham*, *supra*, the rate schedules of the carrier were offered and were rejected by the lower court. And again this Court, speaking through Mr. Justice McReynolds, said:

> "In order to determine the liability assumed for baggage it was proper to consider applicable tariff schedules on file with the Interstate Commerce Commission; and the carrier had a federal right not only to a fair opportunity to put these schedules in evidence but also when before the court they should be given due consideration."

Yet these schedules were called irrelevant and immaterial evidence in the case at bar and neither the Georgia Court of Appeals nor the Supreme Court of the State has reversed the lower court's finding in this respect. It is true that the Court of Appeals decided the case by assuming that all that could have been proved by the rate schedules was duly proved and doubtless the state Supreme Court followed that line of reasoning. Nevertheless, this Court has twice suggested the question that it may be necessary to put these rate schedules in evidence before the carrier can effectually limit its liability.

See the *Byers* and *Beaham* cases, cited supra.

CONCLUSION

It is submitted, therefore, that the petitioner has been subjected to a liability against which it is protected by the receipt issued to the shipper and by the Second Cummins Amendment. It is respectfully urged that the holding of the state appellate court, which permits recovery for full actual loss is error and that for that error and for the error lying within the trial court's action, in refusing the rate schedules, there should be a reversal of the judgment of the Supreme Court of Georgia.

Respectfully submitted,

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